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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,922	02/02/2004	George Gonzalez	GONZAL-42510	1679

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EXAMINER

BERTRAM, ERIC D

ART UNIT	PAPER NUMBER
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3766

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/770,922

Applicant(s)

GONZALEZ, GEORGE

Examiner

Eric D. Bertram

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7-19, 22, 23 and 55-67 is/are pending in the application.
- 4a) Of the above claim(s) 10-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-19, 22, 23 and 55-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-3, 7-9, 17-19, 22, 23 and 55-67 have been considered but are moot in view of the new ground(s) of rejection.

Election/Restrictions

2. Claims 10-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5/4/2006.

Specification

3. The amendments to the specification received on 11/14/2006 are acknowledged and accepted, and the objection to the specification has been withdrawn.

Terminal Disclaimer

4. The terminal disclaimer filed on 11/14/2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent No. 6,685,729 has been reviewed and is accepted. The terminal disclaimer has been recorded and the double patenting rejection has been withdrawn.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-3, 7-9, 17-19, 22, 23 and 55-67 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are:

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testing a physical function. Independent claims 1, 19 and 55 all contain the limitation of "resetting nerve supply to an area of dysfunction or physical function being tested," however, none of the claims ever reciting "testing a physical function" in the first place.

7. Furthermore, the limitation of "resetting nerve supply to an area of dysfunction or physical function being tested" is considered as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether this is referring to a separate area of physical function, and, if not, how a nerve supply could be reset to a "physical function." It is also unclear who or what is performing the physical function since no patient or object has been defined.

8. Finally, the limitation of "stimulating the area of dysfunction, spine and head" is indefinite since it is unclear whether the area of dysfunction is the spine and the head, or whether there is distinct individual stimulation of the area of dysfunction, the area of a spine and the area of a head. Again, it is unclear what kind of head and spine is possibly being stimulated since no patient or object has been defined.

9. Since claims 2, 3, 7-9, 17, 18, 22, 23 and 56-67 all depend from claims 1, 19 and 55, they are rendered indefinite by their association.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

11. Claims 1-3, 7-9, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker (US 4,671,285). Walker discloses performing combined tests of a complete physical examination and routine laboratory tests to identify the neurological dysfunction of a patient (Col. 3, line 66-Col. 4, line 12). Walker then discloses applying electrical stimulation with a therapeutic device to a patient in order to stimulate nerves in the area of dysfunction until no dysfunction is detected (see figure 2 and Col. 5, lines 4-10). This procedure is considered to be "resetting the nerve supply" to the area of dysfunction. Furthermore, since all nerves are connected to the spine and head in some way, by stimulating the nerves in the area of dysfunction, the spine and head are inherently stimulated as well.

12. Regarding claim 2, Walker discloses identifying the pathway to the area of dysfunction (Col. 4, lines 15-26).

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13. Regarding claims 7 and 8, Walker also discloses utilizing a laser to treat the area of dysfunction (Col. 5, lines 20-32).

14. Regarding claims 9 and 18, during the course of a complete physical examination, multiple muscle groups will inherently be tested simultaneously and can be performed from the base of the body towards the head.

15. Claims 19, 22, 23, 55-58, 66 and 67 are rejected under 35 U.S.C. 102(a) and/or 102(e) as being anticipated by Zhukova et al. (US 6,209,545, hereinafter Zhukova).

Zhukova discloses performing a test wherein a peripheral nerve is palpated to determine its condition by pressing through soft tissue, which inherently contains multiple muscles (Col. 2, lines 45-50). Once the condition is determined, Zhukova discloses massaging the nerve area through physical manipulation from the base of the nerve towards the organs and head in order to reset and recover the nerve supply to an area of dysfunction (Col. 2, lines 33-67). This procedure is done until the patient is cured (Col. 3, lines 64-65).

Allowable Subject Matter

16. Claims 59-65 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

17. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

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Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Peterson et al. (US 6,267,733) disclose a system and method for providing combined tests to a patient to assess and treat neurological disorders.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D. Bertram whose telephone number is 571-272-3446. The examiner can normally be reached on Monday-Thursday from 8:30-7.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eric D. Bertram
Examiner
Art Unit 3766

EDB


Robert E. Pezzuto
Supervisory Patent Examiner
Art Unit 3766